

Testimony of Kevin C. Bogan
Chair and Members of the Council
March 17, 2009

Bill 4, CD 1: Relating to the use of electronic devices while operating motor vehicles.

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Chair Apo and Members of the Council,

Thank you for the opportunity to testify on this bill which intends to improve the safety of our roadways.

I SUPPORT WITH AMENDMENTS and ask that you amend the bill to allow operation of mobile licensed amateur radio.

I propose that a third exemption or something similar be added to Sec. 15-24 (c) as follows:

(3) Drivers using two-way mobile radio transmitters or receivers who are licensees of the Federal Communications Commission in the Amateur Radio Service.

Please read the following Policy Statement of ARRL, the national association for Amateur Radio, which gives rationale for the exemption and provides examples of statutory language.

In the policy statement, you will discover that:

1. Amateur radio two-way radios have been used for 70 years with no evidence, of which the ARRL is aware, that such operation contributes to driver inattention.
2. In fact, "radio amateurs are public service-minded individuals who utilize their radio-equipped motor vehicles to assist others, and they are focused on driving in the execution of that function" to such a degree that they provide an invaluable service to the Radio Amateur Civil Emergency Service of the Department of Emergency Management of the City and County of Honolulu. Frequently, it is the amateur radio community in its normal operation that discovers the conditions of an emergency and that it exists such as on December 26, 2008 during the power outage on O'ahu. Within minutes, the areas of outage were discovered and, over the ensuing hours, the amateur radio operators reported on the progress of power restoration - knowledge which leads to public safety.
3. Amateur radio operation is different from cellular telephone in that the operator is typically receiving or talking, but not both at the same time; that the operator is talking into a microphone in front of the mouth, not at the side of the head, then listening to a fixed, mounted speaker; and that the operation is consistent with that of commercial two-way radios such as taxis, tow trucks, etc.

I am testifying as a private citizen and as the ARRL Pacific Section Emergency Coordinator active in the Amateur Radio Emergency Service (ARES), the Radio Amateur Civil Emergency Service (RACES), and numerous other organizations. Please contact me for any assistance in drafting of bill language and further justification.

POLICY STATEMENT

of

ARRL, THE NATIONAL ASSOCIATION FOR AMATEUR RADIO

Adopted by the ARRL Executive Committee, January 30, 2009

Mobile Amateur Radio Operation

ARRL, the national association for Amateur Radio, formally known as the American Radio Relay League, Incorporated (ARRL) is the principal advocate for the interests of FCC-licensed Amateur Radio operators in the United States. Obtaining an FCC Amateur Radio license requires the passing of a written examination on regulations, operating practices, electronics theory, and safety. There are approximately 680,000 licensed Amateur Radio operators in the United States. Amateur Radio operators provide emergency and public service communications on a volunteer, uncompensated basis. Amateur Radio is an avocation, which is intended by the Federal Communications Commission to encourage and promote technical self-training, international goodwill, non-commercial communication service (particularly with respect to emergency communications), advancement of radio technology, and expansion of the existing reservoir of trained operators, technicians, and electronics experts. Amateur Radio operators are responsible for many advances in electronics and telecommunications technology over the past 100 years.

In the course of preparing for and conducting emergency, disaster and other public service communications, Amateur Radio operators routinely equip their motor vehicles with two-way radios, operated most often with hand-held microphones. The radios are typically installed in the vehicles and utilize fixed mounted speakers. Unlike cellular telephones, the speakers are not held to the face; the radios remain in the receive mode most of the time; transmissions typically are brief and infrequent. The microphone is held only when a transmission is being made or is imminent, and otherwise is stowed in a position where the operator can reach it without removing his or her eyes from the road. Amateur operators often conduct mobile communications as participants in networks of stations, controlled often by a fixed station, not unlike commercial dispatch mobile radio systems. Radio amateurs have regularly used mobile two-way radio systems for the past 70 years. The ARRL is aware of no evidence that such operation contributes to driver inattention. Quite the contrary: radio amateurs are public service-minded individuals who utilize their radio-equipped motor vehicles to assist others, and they are focused on driving in the execution of that function.

The States encourage mobile amateur radio operation as a public benefit. Every State issues license plates to motor vehicles of licensed radio amateurs showing their FCC-assigned call letters, in order to identify a particular vehicle as a mobile-radio equipped vehicle. The United States Congress, in 1994, in a Joint Resolution (S.J. Res. 90/H.J. Res. 199 (1994)), in "recognizing the achievements of radio amateurs, and to establish support for such amateurs as national policy" found and declared, among other things, that: "reasonable accommodation should be made for the effective operation of amateur radio from residences, private vehicles and public areas, and that regulation at all levels of government should facilitate and encourage amateur radio operation as a public benefit."

The ARRL acknowledges numerous and increasing instances of state legislative proposals (and occasionally municipal ordinance proposals) to curb the use of cellular telephones while operating motor vehicles, ranging from prohibitions on hand-held telephones to prohibitions on all forms of electronic devices. These statutory proposals would supplement the more generalized motor vehicle code requirements that exist in various forms in virtually all States, which require operators of motor vehicles to pay full time and attention to the operation of the vehicle while driving. ARRL understands that driver inattention is a leading cause of automobile accidents, and it is not unreasonable to be concerned about substantial distractions to drivers of motor vehicles.

Typically, the intention of this type of legislation is to prohibit the operation of cellular telephones specifically, and devices incorporating full duplex wireless telephones, while operating a motor vehicle. Some such statutes prohibit the use of such devices while driving unless they incorporate "hands-free" peripheral attachments. There is substantial variation in the definition of the devices regulated by the legislation. Often, the proposed statutory language broadly prohibits operation of "mobile communication devices" or "mobile electronic devices" while driving. Whether or not intentionally, some of these proposed statutes or ordinances would in fact, or could be interpreted to prohibit the operation of Amateur Radio equipment by drivers of motor vehicles. Often, there are exemptions to the general prohibition of mobile electronic or communication devices while driving. Some legislation specifically exempts devices that are operated on a hands-free basis. Other exemptions reference specific types of devices or radio services (such as public safety land mobile radio, Citizen's Radio Service or business and industrial land mobile radio) which are not intended to be restricted. Some legislation specifically exempts licensed Amateur Radio mobile operation; some does not.

Amateur Radio mobile operation is ubiquitous, and Amateur Radio emergency and public service communications, and other organized Amateur Radio communications activities and networks necessitate operation of equipment while some licensees are driving motor vehicles. Two-way radio use is dissimilar from full-duplex cellular telephone communications because the operator spends little time actually transmitting; the time spent listening is more similar to, and arguably less distracting than, listening to a broadcast radio, CD or MP3 player. There are no distinctions to be made between or among Amateur Radio, public safety land mobile radio, private land mobile radio, or

citizen's radio in terms of driver distraction. All are distinguishable from mobile cellular telephone communications in this respect. Nevertheless, ARRL encourages licensees to conduct Amateur communications from motor vehicles in a manner that does not detract from the safe and attentive operation of a motor vehicle at all times.

Given the necessity of unrestricted mobile Amateur Radio communications in order for the benefits of Amateur Radio to the public to continue to be realized, ARRL urges state and municipal legislators considering restrictions on mobile cellular telephone operation to (I) narrowly define the class of devices included in the regulation so that the class includes only full duplex wireless telephones and related hand-held or portable equipment as defined below; or alternatively (II) specifically identify licensed Amateur Radio operation as an excluded service.

Suggested statutory language for state motor vehicle codes follows:

(Definition)

"Cellular Telephone (or Mobile Communications/Electronic Device)" as used herein means hand held or portable electronic equipment capable of providing full duplex, wireless voice or data communications via the public switched telephone network between two or more people. Also included are devices for text messaging or paging, personal digital assistants, laptop computers, equipment capable of playing video games or video disks, or equipment on which digital photographs are taken or displayed.

(Prohibited Acts)

Section _____ Use of cellular telephones or mobile communications/electronic devices prohibited. No person shall use a cellular telephone (or mobile communications or electronic device) in any manner, including the reading or sending of text or electronic messages on the telephone, while operating a motor vehicle unless the telephone is specifically designed to allow hands-free operation and the telephone is so used. This section shall not apply to a person who is using the cellular telephone (or mobile communications/electronic device): (a) While the vehicle is lawfully parked; or (b) To contact or receive calls from an emergency response vehicle or agency.

(Exclusion)

A mobile (electronic/communication) device does not include audio equipment or any equipment installed in the vehicle to provide navigation or emergency information to the driver, or video entertainment exclusively to passengers in the back seat. Nor does it include two-way mobile radio transmitters or receivers used by licensees of the Federal Communications Commission in the Amateur Radio Service.

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